

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDMOND PAUL PRICE,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
JAMES M. BIXLER, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 60440

FILED

MAY 10 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Angela*
DEPUTY CLERK

ORDER GRANTING PETITION

This original petition for a writ of mandamus challenges an order of the district court denying petitioner's motion to dismiss an indictment due to irregularities in the grand jury proceedings. Petitioner Edmond Paul Price is charged with multiple serious offenses stemming from a business transaction involving the sale and purchase of gold between Price and the victim. During the transaction, Price and his companion, Victoria Edelman, allegedly attacked the victim, leaving him with significant injuries. The State sought an indictment against Price and Edelman, and on August 12, 2010, a Marcum¹ notice was served on Price, who is in custody in California awaiting trial on unrelated offenses, and Price's California counsel, Trace Milan. On August 15, 2010, Price sent a letter to the Clark County District Attorney's Office stating that

¹Sheriff v. Marcum, 105 Nev. 824, 783 P.2d 1389 (1989).

“[a]gainst Mr. Milan’s advice, I [] waive my right against self-incrimination” and expressing his desire to testify before the grand jury. He requested that the District Attorney provide him with the date and time of the grand jury proceedings and stated that Milan did not represent him “in any case outside of California” and therefore any information related to the case should be sent directly to him. The documents before us indicate that the State has acknowledged receiving the letter.

On August 24, 2010, the case was presented to a grand jury, and a true bill was returned against Edelman. Deliberations against Price remained pending. In September 2010, the prosecutor contacted Milan, who related that he and Price wished to observe the grand jury proceedings. The prosecutor informed Milan that they were not permitted to merely observe the proceedings but that Price could appear and testify. About one week later, Milan informed the prosecutor that Price did not wish to testify. The grand jury returned a superseding indictment against Price and Edelman on October 20, 2010. Price subsequently filed a motion to dismiss the indictment in September 2011 on a variety of grounds, including that the State failed to provide proper notice of the grand jury proceedings. See NRS 172.241. The State opposed the motion. After a hearing, the district court denied Price’s motion, concluding that the State satisfied the statutory notice requirements by contacting Milan and relying on his representation that after consulting with Price, Price elected not to testify before the grand jury. Price filed his original petition for a writ of mandamus in this court on March 13, 2012. At this court’s direction, the State filed an answer to the petition.

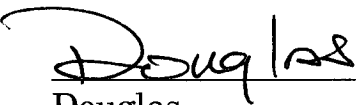
A writ of mandamus will issue to compel the performance of an act which the law requires as a duty resulting from an office, trust or


station, NRS 34.160; “[m]andamus will not lie to control discretionary action unless discretion is manifestly abused or is exercised arbitrarily or capriciously,” Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981) (citation omitted). A writ of mandamus will not issue if petitioner has “a plain, speedy and adequate remedy in the ordinary course of law.” See NRS 34.170. It is within our discretion to determine if a petition will be considered. See Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982); see also State ex rel. Dep't Transp. v. Thompson, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983). Because we conclude that Price has no adequate remedy at law, see Dettloff v. State, 120 Nev. 588, 596, 97 P.3d 586, 591 (2004) (concluding that conviction of offenses “under a higher burden of proof cured any irregularities that may have occurred during the grand jury proceedings”); Echavarria v. State, 108 Nev. 734, 745 n.4, 839 P.2d 589, 596 n.4 (1992) (“The Supreme Court has suggested that a jury verdict of guilty may render harmless an error in the grand jury proceedings.”) (citing United States v. Mechanik, 475 U.S. 66, 71-73 (1986))), we elect to exercise our discretion to consider the petition.

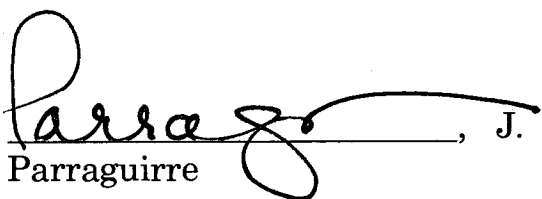
Having considered the writ petition, the State’s answer, and the documents submitted, we conclude that the district court manifestly abused its discretion by denying Price’s motion to dismiss the indictment. In response to the statutory notice of grand jury proceedings, Price submitted a written request to testify before the grand jury, including relevant contact information where a notice of the date, time, and place of the proceedings could be sent. Price also expressly waived his constitutional privilege against self-incrimination. And he explicitly informed the State that Milan did not represent him in the Nevada

criminal case. We conclude that Price's written request complied with the requirements of NRS 172.241(1), and (2)(b), and the State was sufficiently made aware that Milan did not represent Price in the Nevada criminal action. Accordingly, Price should have been afforded notice of the date, time, and place of the grand jury proceedings to effectuate his express desire to testify at those proceedings. Accordingly, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to dismiss the indictment.²


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. James M. Bixler, District Judge
Coyer & Landis, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²We leave open the question whether Price may testify at the grand jury proceedings by audiovisual transmission equipment.